

# EXHIBIT 57

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: \*  
\*  
24 HOUR FITNESS \* Chapter 11  
WORLDWIDE, INC., ET AL., \*  
Debtors. \* Case No.: 20-11558 (KBO)  
\*  
\_\_\_\_\_\* (Jointly Administered)  
\*  
24 HOUR FITNESS \*  
WORLDWIDE, INC., \*  
Plaintiff, \*  
\*  
VS. \* Adv. Proc. No. 20-51051 (KBO)  
\*  
CONTINENTAL CASUALTY \*  
COMPANY, ET AL., \*  
Defendants. \*

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF MIKE ALLEN

VOLUME 1

SEPTEMBER 21, 2022

(Reported Remotely)

\*\*\*\*\*

**NELL McCALLUM & ASSOCIATES, INC.**

**Exhibit 57 to Plaintiff's Appendix of Evidence  
in support of Plaintiff's Motion for Partial Summary Judgment**

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1 ORAL AND VIDEOTAPED DEPOSITION of MIKE ALLEN,  
2 produced as a witness at the instance of the Plaintiff,  
3 and remotely duly sworn, was taken in the above-styled  
4 and numbered cause on September 21, 2022, from 11:04  
5 a.m. to 2:02 p.m. Central Time, before Carol Jenkins,  
6 CSR, RPR, CRR, in and for the State of Texas, reported  
7 by machine shorthand, with the Witness in California,  
8 pursuant to the Federal Rules of Civil Procedure, the  
9 Emergency Order Regarding the COVID-19 State of  
10 Disaster, and the provisions stated on the record or  
11 attached hereto.

## R E M O T E   A P P E A R A N C E S :

## FOR THE PLAINTIFF:

Mr. Connor O'Carroll  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, California 94105  
415.543.8700  
cocarroll@reedsmith.com

## FOR THE DEFENDANT, CONTINENTAL CASUALTY COMPANY:

Mr. Brett Ingerman  
Mr. Matthew Denn  
Ms. Jacqueline Matyszczyk (Paul Weiss)  
DLA Piper LLP  
6225 Smith Avenue  
Baltimore, Maryland 21209  
410.580.3000  
matthew.denn@us.dlapiper.com

## FOR THE STARR SURPLUS DEFENDANT:

Ms. Courtney Murphy  
Hinshaw & Culbertson  
800 Third Avenue, Suite 1300  
New York, New York 10022  
212.471.6200  
cmurphy@hinshawlaw.com

## FOR THE ALLIED WORLD DEFENDANT:

Ms. Elizabeth M. Brockman  
Mr. Austin Westergom (Mound Cotton)  
Selman Breitman LP  
11766 Wilshire Boulevard, Suite 600  
Los Angeles, California 90025  
310.445.0800  
ebrockman@selmanlaw.com

## FOR THE ALLIANZ DEFENDANT:

Ms. Marlie McDonnell  
Clyde & Co  
271 17th Street NW, Suite 1720  
Atlanta, Georgia 30363  
404.410.3150  
marlie.mcdonnell@clydeco.us

1 FOR THE LIBERTY MUTUAL FIRE DEFENDANT:  
2 Mr. Joel L. McNabney  
3 Robinson & Cole LLP  
4 777 Brickell Avenue, Suite 680  
5 Miami, Florida 33131  
6 786.725.4119  
7 jmcnabney@rc.com

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ALSO PRESENT:  
The Videographer, Ms. Jessica Rawls

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1 THE VIDEOGRAPHER: Good morning. Today is  
2 Wednesday, September 21st, 2022. The time is  
3 11:04 a.m., and we are now on the record.

4 THE REPORTER: Good morning. My name is  
5 Carol Jenkins reporting this remotely from Chambers  
6 County, Texas; and the witness is located in California.

7 MIKE ALLEN,  
8 having been first remotely duly sworn, testified as  
9 follows:

10 MR. O'CARROLL: Good morning. This is  
11 Connor O'Carroll on behalf of plaintiffs, 24 Hour  
12 Fitness.

13 MS. MURPHY: Good morning. This is  
14 Courtney Murphy representing certain of the insureds,  
15 and also representing Mike Allen in today's deposition.

16 EXAMINATION

17 BY MR. O'CARROLL:

18 Q. All right. Mr. Allen, good morning.

19 A. Good morning.

20 Q. My name -- like I said, my name is Connor  
21 O'Carroll. I'm counsel for plaintiffs here, and I'm  
22 going to be taking your deposition today.

23 Mr. Allen, I assume you've had a  
24 deposition before.

25 A. I have.



1           One of the prerequisites to this coverage,  
2           you would agree, is showing the actual presence and  
3           spread of a communicable disease at an insured location,  
4           correct?

5           A.    Let's go through that again.

6           Q.    So it says: All coverage must be directly  
7           resulting from access being prohibited to a described  
8           location or any portion thereof.

9                   And then it has two subparts. And the  
10          first subpart, so one of the conditions is due to the  
11          actual spread -- or due to the actual presence of and  
12          spread of a communicable disease at the described  
13          location.

14                   Do you agree?

15          A.    That's -- that's what it says, yeah.

16          Q.    Okay. And so as the adjuster investigating  
17          this claim, what type of information would you be  
18          interest -- would you -- what type of information would  
19          you need to determine if that -- that provision of this  
20          endorsement was satisfied?

21          A.    I'd want some evidence that there was a  
22          communicable disease there at the described location.  
23          And if -- however they would be able to determine it was  
24          spread to the -- to the property. I'm not sure how they  
25          would do that, but that's what I would request.

1 Q. Okay. And so would evidence of a person  
2 confirmed to have COVID-19 being at an insured location,  
3 would that -- would that be sufficient to satisfy this  
4 prong in your opinion?

5 MS. MURPHY: Objection.

6 A. Connor, I would have to go to the insurers and  
7 give them the information and leave it up to them.

8 Q. (By Mr. O'Carroll) Okay. Let's talk about the  
9 second prong here. It talks about the second prong here  
10 of access being prohibited is as a direct result of a  
11 declaration by civil authority enforcing any law or  
12 ordinance regulating any communicable disease.

13 Did I read that right?

14 A. Yes.

15 Q. Okay. How would you understand that provision  
16 to be met when you're in -- or strike that.

17 When you're investigating this claim, what  
18 information, if any, are you interested in to try and  
19 assess this prong of the communicable disease  
20 endorsement?

21 A. Well, let's see. As a direct result of  
22 declaration by a civil authority, so I would want to see  
23 the declaration by the civil authority enforcing any law  
24 or ordinance. So there -- if there's a declaration by  
25 civil authority, I'd want to see it.

1 A. Uh-huh.

2 Q. But that may have been a little later.

3 Do you recall, do you -- do you recall if  
4 any of the insurers assisted with these April 16th, 2020  
5 questions?

6 A. I can't tell you right now. I don't remember.

7 Q. Okay. I want to -- I want to ask you about  
8 question No. 5.

9 Do you see it there?

10 A. Yeah.

11 Q. Okay. And it says: Have the properties been  
12 tested for the presence of the COVID-19 virus?

13 Mr. Allen, are you aware of any tests that  
14 can be performed to test a property for the presence of  
15 COVID-19?

16 A. Personally, no.

17 Q. Okay. What -- what -- what were you or the  
18 insurers trying to get at with question No. 5?

19 A. The first report that we had from Jeremy said  
20 we had a COVID-19 situation at the Portland location.  
21 So somehow he determined that they had an issue.

22 So if there was some test results they  
23 had, we'd like to see those. How did he determine that  
24 the building had COVID-19, if there were positive tests,  
25 have you done any type of special cleaning.

1 along with that.

2 Q. And, Mr. Allen, in your course of investigating  
3 this claim, did you find any orders that restricted  
4 access to any of the insureds' locations?

5 A. And I'll tell --

6 MS. MURPHY: Objection.

7 A. -- you what. I'm going to go back and say off  
8 the top of my head, I think the orders I saw were  
9 closing businesses so that people didn't gather. But I  
10 don't think I saw anything that said we prohibit you  
11 from going into a location.

12 Q. (By Mr. O'Carroll) Okay. And so you mentioned  
13 orders. Were you also interested in investigating  
14 whether or not COVID-19 was present in any of the  
15 insureds' locations?

16 A. We requested that the insured provide us with  
17 any evidence they have. You know, if they know it was  
18 there, just send us the documentation you have that  
19 establishes that.

20 Q. And what's your opinion of what type of  
21 evidence may constitute the presence of COVID-19 at an  
22 insured location?

23 A. Well, if they knew it was there, I would ask  
24 them how did you determine that.

25 Q. Okay. And what type of response could the

1 insured give that would satisfy you that COVID-19 was  
2 present at an insured location?

3 A. If -- if there was an event with an individual,  
4 if there was some testing that was done. If you cleaned  
5 up something, how did you know there was COVID there.  
6 And if it was -- if your cleanup was confined to a  
7 certain area, how did you establish that.

8 Q. Okay. And when you say an event with a certain  
9 individual, does that mean an individual that is  
10 confirmed to have COVID-19 being at the location?

11 A. Yeah, that would at least establish that  
12 somebody -- somebody that had it was there.

13 Q. Okay.

14 A. So I would take -- Connor, I would take  
15 whatever they could give me to establish that we have  
16 COVID there, and that could be anything.

17 Q. Okay. Mr. Allen, I appreciate that.

18 If you want to go back to Exhibit Q, this  
19 is your report, your May 15 report.

20 A. Okay.

21 Q. And if you go to PDF page 4 -- well, it starts  
22 on PDF page 3, but there's a response from 24 Hour  
23 Fitness that you quoted here. And it's talking about  
24 the communicable disease endorsement. This -- this  
25 is -- and ending our email, we also asked the insured if

1 A. Not specifically as I recall.

2 Q. Did you ever follow up specifically about any  
3 of the 24 incidents that 24 Hour Fitness provided to you  
4 about COVID-19?

5 A. Yeah. I think in a general way, we asked for  
6 copies of any of the cleanup invoicing and so forth or  
7 any of the testing that might have been done to confirm  
8 not only those 28 but any others they may have had.

9 Q. And, Mr. Allen, what is your understanding of  
10 what type of confirmation 24 Hour could have -- 24 Hour  
11 Fitness could have provided to establish the actual  
12 presence of COVID-19 in an insured location?

13 A. Yeah, I don't know of -- I don't know of what  
14 tests are available. So I have to plead ignorance on  
15 that one.

16 Q. Sure.

17 A. If -- if there was a situation where a  
18 jurisdiction civil authority came in and said, hey,  
19 you've got a problem here such as you might see in a  
20 Legionnaire's disease type claim, there may be something  
21 from a civil authority that says, you know, there's  
22 COVID here.

23 Q. Okay. So I appreciate that answer.

24 So one -- one example that 24 Hour Fitness  
25 could have provided would have been a specific order or

1 government edict saying, like you mentioned  
2 Legionaire's, is there anything else that the 24 Hour  
3 Fitness could have provided that would have, in your  
4 understanding, confirmed the actual presence of COVID-19  
5 in its insured locations?

6 A. You know, specifically, I don't know.

7 Q. Okay. Do you think that that -- knowing that  
8 would help inform your investigation under the policy?

9 MS. MURPHY: Knowing what? Objection.

10 Q. (By Mr. O'Carroll) Knowing -- knowing exactly  
11 what information that you're looking for to confirm the  
12 presence of COVID-19 at the insured locations.

13 A. If there was a common test, for instance, mold,  
14 you can test; asbestos, you can test. I don't know if  
15 there's a COVID test.

16 So we would ask them if you know or you  
17 think you have COVID there, if you've cleaned it up, you  
18 must have had something that indicates there's COVID  
19 there. So whatever you can provide, and if you can't  
20 provide anything, then -- then you can't provide  
21 anything.

22 Q. Okay.

23 A. But if you have something, you know, please  
24 send it to us.

25 Q. And you agree there's -- you're not aware they

1 test for -- testing property for COVID-19?

2 A. I have no idea.

3 Q. Okay. And is your under -- so the 24 incidents  
4 that 24 Hour provided, is your -- do you -- is your  
5 opinion that that's sufficient to establish the actual  
6 presence of COVID-19 in an insured location?

7 MS. MURPHY: Objection.

8 A. Yeah, I think, Connor, if you go back to the  
9 28, it talks about a member that reported they had  
10 COVID. It doesn't say the member reported he had COVID  
11 and was in our facility. It's just a member reporting  
12 it.

13 It doesn't -- it doesn't give you a lot of  
14 information. When's the last time he was there? Was it  
15 six months ago or was he there yesterday?

16 Q. (By Mr. O'Carroll) So, Mr. Allen, we can -- we  
17 can pull them back up. And I don't -- I don't  
18 necessarily want to fuss with you about what each of  
19 them say.

20 Really what I'm getting at here is you're  
21 investigating this claim. A part of coverage is the  
22 actual presence and spread of a communicable disease at  
23 the insured location.

24 Do you agree with that? A part of this  
25 claim is your investigation into the actual presence and



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FOR THE DISTRICT OF DELAWARE

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24 HOUR FITNESS \* Chapter 11  
WORLDWIDE, INC., ET AL., \*  
Debtors. \* Case No.: 20-11558 (KBO)  
\*  
\_\_\_\_\_\* (Jointly Administered)  
\*  
24 HOUR FITNESS \*  
WORLDWIDE, INC., \*  
Plaintiff, \*  
\*  
VS. \* Adv. Proc. No. 20-51051 (KBO)  
\*  
CONTINENTAL CASUALTY \*  
COMPANY, ET AL., \*  
Defendants. \*

REPORTER'S CERTIFICATE

DEPOSITION OF MIKE ALLEN

SEPTEMBER 21, 2022

I, CAROL JENKINS, Certified Shorthand  
Reporter in and for the State of Texas, hereby certify  
that this transcript is a true record of the testimony  
given by the witness named herein, after said witness  
was duly sworn by me.

I further certify that the deposition  
transcript was submitted on \_\_\_\_\_,  
\_\_\_\_\_ to the witness or to the attorney for the  
witness for examination, signature, and return to me by  
\_\_\_\_\_, \_\_\_\_\_.

**NELL McCALLUM & ASSOCIATES, INC.**

Exhibit 57 to Plaintiff's Appendix of Evidence  
in support of Plaintiff's Motion for Partial Summary Judgment

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1 I further certify the amount of time used  
2 by each party at the deposition is as follows:

3 Mr. Connor O'Carroll - (02h28m)

4 Mr. Matt Denn - (00h00m)

5 Ms. Courtney Murphy - (00h00m)

6 Ms. Elizabeth Brockman - (00h00m)

7 Ms. Marlie McDonnell - (00h00m)

8 Mr. Joel L. McNabney - (00h00m)

9 I further certify that I am neither  
10 attorney nor counsel for, related to, nor employed by  
11 any of the parties to the action in which this testimony  
12 was taken. Further, I am not a relative or employee of  
13 any attorney of record in this cause, nor do I have a  
14 financial interest in the action.

15 SUBSCRIBED AND SWORN TO by the undersigned  
16 on this the 26th day of September, 2022.

17  
18 

19 CAROL JENKINS, CSR, RPR, CRR  
20 Certificate No. 2660  
21 Date of Expiration: 8/31/2023  
22 Nell McCallum & Associates, Inc.  
23 Firm Registration No. 10095  
24 718 Westcott Street  
25 Houston, Texas 77007  
713.861.0203